

## SB0163S01 compared with SB0163

~~{deleted text}~~ shows text that was in SB0163 but was deleted in SB0163S01.

Inserted text shows text that was not in SB0163 but was inserted into SB0163S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator Howard A. Stephenson proposes the following substitute bill:

### STUDENT DATA PROTECTION AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jacob L. Anderegg**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions of the Student Data Protection Act.

##### Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ repeals an incorrect cross reference;
- ▶ permits a third-party contractor to identify for a student institutions of higher education or scholarship providers that are seeking students who meet specific criteria; and
- ▶ makes technical corrections.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**53A-1-1402**, as enacted by Laws of Utah 2016, Chapter 221

**53A-1-1406**, as enacted by Laws of Utah 2016, Chapter 221

**53A-1-1410**, as enacted by Laws of Utah 2016, Chapter 221

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **53A-1-1402** is amended to read:

**53A-1-1402. Definitions.**

As used in this part:

(1) "Adult student" means a student who:

- (a) is at least 18 years old;
- (b) is an emancipated student; or
- (c) qualifies under the McKinney-Vento Homeless Education Assistance

Improvements Act of 2001, 42 U.S.C. Sec. 11431 et seq.

(2) "Aggregate data" means data that:

- (a) are totaled and reported at the group, cohort, school, school district, region, or state level with at least 10 individuals in the level;
- (b) do not reveal personally identifiable student data; and
- (c) are collected in accordance with board rule.

(3) (a) "Biometric identifier" means a:

- (i) retina or iris scan;
- (ii) fingerprint;
- (iii) human biological sample used for valid scientific testing or screening; or
- (iv) scan of hand or face geometry.

(b) "Biometric identifier" does not include:

- (i) a writing sample;
- (ii) a written signature;
- (iii) a voiceprint;

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- (iv) a photograph;
- (v) demographic data; or
- (vi) a physical description, such as height, weight, hair color, or eye color.

(4) "Biometric information" means information, regardless of how the information is collected, converted, stored, or shared:

- (a) based on an individual's biometric identifier; and
- (b) used to identify the individual.

(5) "Board" means the State Board of Education.

(6) "Cumulative disciplinary record" means disciplinary student data that is part of a cumulative record.

(7) "Cumulative record" means physical or electronic information that the education entity intends:

- (a) to store in a centralized location for 12 months or more; and
- (b) for the information to follow the student through the public education system.

(8) "Data authorization" means written authorization to collect or share a student's student data, from:

- (a) the student's parent, if the student is not an adult student; or
- (b) the student, if the student is an adult student.

(9) "Data governance plan" means an education entity's comprehensive plan for managing education data that:

(a) incorporates reasonable data industry best practices to maintain and protect student data and other education-related data;

(b) provides for necessary technical assistance, training, support, and auditing;

(c) describes the process for sharing student data between an education entity and another person;

(d) describes the process for an adult student or parent to request that data be expunged; and

(e) is published annually and available on the education entity's website.

(10) "Education entity" means:

- (a) the board;
- (b) a local school board;

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- (c) a charter school governing board;
- (d) a school district;
- (e) a charter school;
- (f) the Utah Schools for the Deaf and the Blind; or
- (g) for purposes of implementing the School Readiness Initiative described in Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section 53A-1b-103.

(11) "Expunge" means to seal or permanently delete data, as described in board rule made under Section 53A-1-1407.

(12) "External application" means a general audience:

- (a) application;
- (b) piece of software;
- (c) website; or
- (d) service.

(13) "Individualized education program" or "IEP" means a written statement:

- (a) for a student with a disability; and
- (b) that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

(14) "Internal application" means an Internet website, online service, online application, mobile application, or software, if the Internet website, online service, online application, mobile application, or software is subject to a third-party contractor's contract with an education entity.

(15) "Local education agency" or "LEA" means:

- (a) a school district;
- (b) a charter school;
- (c) the Utah Schools for the Deaf and the Blind; or
- (d) for purposes of implementing the School Readiness Initiative described in Chapter 1b, Part 1, School Readiness Initiative Act, the School Readiness Board created in Section 53A-1b-103.

(16) "Metadata dictionary" means a complete list of an education entity's student data elements and other education-related data elements, that:

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(a) defines and discloses all data collected, used, stored, and shared by the education entity, including:

(i) who uses a data element within an education entity and how a data element is used within an education entity;

(ii) if a data element is shared externally, who uses the data element externally and how a data element is shared externally;

(iii) restrictions on the use of a data element; and

(iv) parent and student rights to a data element;

(b) designates student data elements as:

(i) necessary student data; or

(ii) optional student data;

(c) designates student data elements as required by state or federal law; and

(d) without disclosing student data or security information, is displayed on the education entity's website.

(17) "Necessary student data" means data required by state statute or federal law to conduct the regular activities of an education entity, including:

(a) name;

(b) date of birth;

(c) sex;

(d) parent contact information;

(e) custodial parent information;

(f) contact information;

(g) a student identification number;

(h) local, state, and national assessment results or an exception from taking a local, state, or national assessment;

(i) courses taken and completed, credits earned, and other transcript information;

(j) course grades and grade point average;

(k) grade level and expected graduation date or graduation cohort;

(l) degree, diploma, credential attainment, and other school exit information;

(m) attendance and mobility;

(n) drop-out data;

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- (o) immunization record or an exception from an immunization record;
  - (p) race;
  - (q) ethnicity;
  - (r) tribal affiliation;
  - (s) remediation efforts;
  - (t) an exception from a vision screening required under Section 53A-11-203 or information collected from a vision screening required under Section 53A-11-203;
  - (u) information related to the Utah Registry of Autism and Developmental Disabilities, described in Section 26-7-4;
  - (v) student injury information;
  - (w) a cumulative disciplinary record created and maintained as described in Section 53A-1-1407;
  - (x) juvenile delinquency records;
  - (y) English language learner status; and
  - (z) child find and special education evaluation data related to initiation of an IEP.
- (18) (a) "Optional student data" means student data that is not:
- (i) necessary student data; or
  - (ii) student data that an education entity may not collect under Section 53A-1-1406.
- (b) "Optional student data" includes:
- (i) information that is:
    - (A) related to an IEP or needed to provide special needs services; and
    - (B) not necessary student data;
  - (ii) biometric information; and
  - (iii) information that is not necessary student data and that is required for a student to participate in a federal or other program.
- (19) "Parent" means a student's parent or legal guardian.
- (20) (a) "Personally identifiable student data" means student data that identifies or is used by the holder to identify a student.
- (b) "Personally identifiable student data" includes:
- (i) a student's first and last name;
  - (ii) the first and last name of a student's family member;

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- (iii) a student's or a student's family's home or physical address;
  - (iv) a student's email address or other online contact information;
  - (v) a student's telephone number;
  - (vi) a student's social security number;
  - (vii) a student's biometric identifier;
  - (viii) a student's health or disability data;
  - (ix) a student's education entity student identification number;
  - (x) a student's social media user name and password or alias;
  - (xi) if associated with personally identifiable student data, the student's persistent identifier, including:
    - (A) a customer number held in a cookie; or
    - (B) a processor serial number;
  - (xii) a combination of a student's last name or photograph with other information that together permits a person to contact the student online;
  - (xiii) information about a student or a student's family that a person collects online and combines with other personally identifiable student data to identify the student; and
  - (xiv) other information that is linked to a specific student that would allow a reasonable person in the school community, who does not have first-hand knowledge of the student, to identify the student with reasonable certainty.
- (21) "School official" means an employee or agent of an education entity, if the education entity has authorized the employee or agent to request or receive student data on behalf of the education entity.
- (22) (a) "Student data" means information about a student at the individual student level.
- (b) "Student data" does not include aggregate or de-identified data.
- (23) "Student data disclosure statement" means a student data disclosure statement described in Section 53A-1-1406.
- (24) "Student data manager" means:
- (a) the state student data officer; or
  - (b) an individual designated as a student data manager by an education entity under Section 53A-1-1404.

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(25) (a) "Targeted advertising" means ~~advertising to a student on an internal or external application, if the advertisement is based on information or student data the third-party contractor collected or received under the third-party contractor's contract with an education entity~~ presenting advertisements to a student on an internal or external application where the advertisement is selected based on information obtained or inferred from student data, the student's online behavior, or usage of applications.

(b) "Targeted advertising" does not include advertisements presented to a student on an internal or external application where the advertisement is selected based upon the student's current visit to or single search query on a site, software, service, or application.

(26) "Third-party contractor" means a person who:

(a) is not an education entity; and

(b) pursuant to a contract with an education entity, collects or receives student data in order to provide a product or service, as described in the contract, if the product or service is not related to school photography, yearbooks, graduation announcements, or a similar product or service.

Section ~~41~~2. Section **53A-1-1406** is amended to read:

**53A-1-1406. Collecting student data -- Prohibition -- Student data disclosure statement -- Authorization.**

(1) An education entity shall comply with this section beginning with the 2017-18 school year.

(2) An education entity may not collect a student's:

(a) social security number; or

(b) except as required in Section 78A-6-112, criminal record.

(3) An education entity that collects student data into a cumulative record shall, in accordance with this section, prepare and distribute to parents and students a student data disclosure statement that:

(a) is a prominent, stand-alone document;

(b) is annually updated and published on the education entity's website;

(c) states the necessary and optional student data the education entity collects;

(d) states that the education entity will not collect the student data described in

Subsection (2);



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(e) states the student data described in Section 53A-1-1409 that the education entity may not share without a data authorization;

~~[(f) states that students and parents are responsible for the collection, use, or sharing of student data as described in Section 53A-1-1405;]~~

~~[(g)]~~ (f) describes how the education entity may collect, use, and share student data;

~~[(h)]~~ (g) includes the following statement:

"The collection, use, and sharing of student data has both benefits and risks. Parents and students should learn about these benefits and risks and make choices regarding student data accordingly.";

~~[(f)]~~ (h) describes in general terms how the education entity stores and protects student data; and

~~[(f)]~~ (i) states a student's rights under this part.

(4) An education entity may collect the necessary student data of a student into a cumulative record if the education entity provides a student data disclosure statement to:

- (a) the student, if the student is an adult student; or
- (b) the student's parent, if the student is not an adult student.

(5) An education entity may collect optional student data into a cumulative record if the education entity:

(a) provides, to an individual described in Subsection (4), a student data disclosure statement that includes a description of:

- (i) the optional student data to be collected; and
- (ii) how the education entity will use the optional student data; and

(b) obtains a data authorization to collect the optional student data from an individual described in Subsection (4).

(6) An education entity may collect a student's biometric identifier or biometric information into a cumulative record if the education entity:

(a) provides, to an individual described in Subsection (4), a biometric information disclosure statement that is separate from a student data disclosure statement, which states:

- (i) the biometric identifier or biometric information to be collected;
- (ii) the purpose of collecting the biometric identifier or biometric information; and
- (iii) how the education entity will use and store the biometric identifier or biometric

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information; and

(b) obtains a data authorization to collect the biometric identifier or biometric information from an individual described in Subsection (4).

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### Legislative Review Note

~~Office of Legislative Research and General Counsel†~~ Section 3. Section 53A-1-1410 is amended to read:

**53A-1-1410. Third-party contractors -- Use and protection of student data -- Contract requirements -- Completion of contract -- Required and allowed uses of student data -- Restrictions on the use of student data -- Exceptions.**

(1) A third-party contractor shall use personally identifiable student data received under a contract with an education entity strictly for the purpose of providing the contracted product or service.

(2) When contracting with a third-party contractor, an education entity shall require the following provisions in the contract:

(a) requirements and restrictions related to the collection, use, storage, or sharing of student data by the third-party contractor that are necessary for the education entity to ensure compliance with the provisions of this part and board rule;

(b) a description of a person, or type of person, including an affiliate of the third-party contractor, with whom the third-party contractor may share student data;

(c) provisions that, at the request of the education entity, govern the deletion of the student data received by the third-party contractor;

(d) except as provided in Subsection (4) and if required by the education entity, provisions that prohibit the secondary use of personally identifiable student data by the third-party contractor; and

(e) an agreement by the third-party contractor that, at the request of the education entity that is a party to the contract, the education entity or the education entity's designee may audit the third-party contractor to verify compliance with the contract.

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(3) As authorized by law or court order, a third-party contractor shall share student data as requested by law enforcement.

(4) A third-party contractor may:

(a) use student data for adaptive learning or customized student learning purposes;

(b) market an educational application or product to a parent or legal guardian of a student if the third-party contractor did not use student data, shared by or collected on behalf of an education entity, to market the educational application or product;

(c) use a recommendation engine to recommend to a student:

(i) content that relates to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party; or

(ii) services that relate to learning or employment, within the third-party contractor's internal application, if the recommendation is not motivated by payment or other consideration from another party;

(d) respond to a student request for information or feedback, if the content of the response is not motivated by payment or other consideration from another party; [or]

(e) use student data to allow or improve operability and functionality of the third-party contractor's internal application[-]; or

(f) identify for a student institutions of higher education or scholarship providers that are seeking students who meet specific criteria, regardless of whether the identified institutions of higher education or scholarship providers provide payment or other consideration to the third-party contractor.

(5) At the completion of a contract with an education entity, if the contract has not been renewed, a third-party contractor shall:

(a) return all personally identifiable student data to the education entity; or

(b) as reasonable, delete all personally identifiable student data related to the third-party contractor's work.

(6) (a) A third-party contractor may not:

(i) except as provided in Subsection (6)(b), sell student data;

(ii) collect, use, or share student data, if the collection, use, or sharing of the student data is inconsistent with the third-party contractor's contract with the education entity; or

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(iii) use student data for targeted advertising.

(b) A person may obtain student data through the purchase of, merger with, or otherwise acquiring a third-party contractor if the third-party contractor remains in compliance with this section.

(7) A provider of an electronic store, gateway, marketplace, or other means of purchasing an external application is not required to ensure that the external application obtained through the provider complies with this section.

(8) The provisions of this section do not:

(a) apply to the use of an external application, including the access of an external application with login credentials created by a third-party contractor's internal application;

(b) apply to the providing of Internet service; or

(c) impose a duty on a provider of an interactive computer service, as defined in 47 U.S.C. Sec. 230, to review or enforce compliance with this section.